

SECTION VII

COMPLIANCE MONITORING PROCEDURES AND FORMS

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This Section of the manual outlines MSHDA's procedures for monitoring all projects allocated tax credit. Monitoring is designed to determine if the owner is in compliance with federal and state laws, regulations, and policies. Compliance is solely the responsibility of the owner and is necessary to retain and use the credit, and to avoid recapture of credit already claimed.

Monitoring each project is an ongoing activity that extends throughout the credit compliance period. MSHDA is required by law to conduct compliance monitoring and inform the IRS of noncompliance, or the failure of an owner to certify to compliance. MSHDA will report to the IRS no later than 45 days after the period of time allowed for correction. Notification to the IRS by MSHDA is required whether the noncompliance has or has not been corrected.

Part 700 : The Compliance Manual

MSHDA will provide this Manual to owners of tax credit projects when the projects are placed in service and a final credit allocation has been issued (IRS Form 8609). The Manual describes the compliance monitoring procedures that the owner and management agent must follow. Updates will be provided by MSHDA as changes to the law and/or procedures occur.

The manual also contains the required reporting and certification forms that must be utilized and submitted to MSHDA, sample tenant eligibility forms, Section 42 of the Code and final compliance monitoring regulations as published in the Federal Register, and other pertinent IRS notices and rulings.

Part 705 : Compliance Training Workshops

MSHDA will conduct periodic compliance training workshops. Although not mandatory, it is recommended that personnel who are directly involved in the ownership or management of the project attend a workshop either prior to or immediately following the date the project is placed in service. The purpose of workshops is to provide instruction on:

A sampling of the basic Code compliance requirements; IRS final regulations for compliance monitoring; MSDHA policy and procedures for compliance reporting; MSHDA policy and procedures for tenant file reviews; equal housing opportunity and fair housing regulations and policies.

The training workshop will also provide specific information on the following low-income tenant eligibility requirements:

Income and rent limits; definitions of income and assets; certification of tenant income and assets; verification of tenant income and assets; leases; student eligibility; reporting violations of the tax credit program; and other owner responsibilities, including notifying MSHDA of any change in management or ownership of the project.

Announcements will be made as to the specific date, time and location of workshops when the details have been finalized.

Part 710 :: Compliance Files and Records

The following compliance files and records must be maintained by the project owner and made available to MSHDA upon request.

- Annual Compliance Certifications / Project Forms. See **Part 715**.
- Annual Project Summary Form. See **Part 720**.
- Development File. See **Part 350**.
- HUD 50058 & HUD 50059 – See **Part 680**.
- Lease Agreement – See **Part 675**.
- Owner Record-keeping and Record Retention Requirements. See **Part 310**.
- Rental Application – See **Part 615**.
- RD 1944-8 (Tenant Certification) – See **Part 685**.
- Tenant Eligibility Certification Forms. See **Part 740**.
- Tenant / Unit File. See **Part 755**.
- Verification Forms for Income and Assets – See **Section VI (Qualifying Tenants for LITHC Units)**.

**Part 715 :: Annual Compliance Certifications /
Project Forms**

The forms listed below must be submitted to MSHDA on an annual basis to certify a project's continuous compliance with LITHC regulations. These certifications are made under penalty of perjury that the information provided is true, complete, and in compliance with Section 42 of the IRC.

- A. Owner Certification of Continuing Program Compliance (Form LIHTC 020)** - This form is used to certify continuing compliance with Section 42 and is completed by the owner on an annual basis. See **Part 330** for a detailed description of the Owner Certification form.
- B. Tenant Income and Rent Report (Form LIHTC 021)** – This form is used to detail the income amounts and rent changes for all occupants in the development and is completed by the owner and/or management agent on an annual basis. For more information regarding the Tenant Income and Rent Report, See **Part 340**.
- C. Utility Allowance Documentation (Form LIHTC 043)** – This form details the monthly amount estimated for each utility, the source of the estimate, and whether or not the utility is tenant-paid. This form must be completed by the owner/manager on at least an annual basis or whenever an update has been made. See **Part 555** for more information about utility allowances.
- D. Resident Manager's/Employee Occupied Unit Designation (Form LIHTC 047)** – This form must be completed for every LITHC project. It is used to designate a particular unit as common area if a project has such a unit. For more information, see **Part 930 (Common Area Residential Unit)** and **Part 845 (Managers / Employees as Tenants)**.

Copies of these forms are contained in **Appendix A** of this compliance manual. Failure to supply legible and thoroughly completed Owner Certification and Tenant Income and Rent Reports when they are due will be considered noncompliance. See **Part 735 (Due Dates for Annual Compliance Certifications)** for information.

Part 720 :: Annual Project Summary Form

This form is used to describe the occupancy status and characteristics of the entire development and is completed by the owner and/or management agent. An Annual Project Summary must be completed for each year during the compliance period. It is only necessary to complete this form if the project has special targeting restrictions, such as persons with disabilities, homeless, battered women, large households, special needs individuals, etc. It does not have to be submitted to MSHDA with Items A, B, and C in **Section 715 (Annual Compliance Certifications / Project Forms)**, but should be kept in the owner's Development File and made available to MSHDA upon request. See **Part 350** for more information regarding the Development File.

Part 725 : Compliance Monitoring Fees

All projects must pay either a lump sum or annual compliance monitoring fee as described below. Compliance fees and physical inspection fees (see [Part 730](#)) are subject to change.

A. Lump Sum Fee

1. All units for which an allocation of credit was made after December 31, 1992 but prior to January 1, 1997 paid the sum of \$125.00 per low-income unit, which will cover the entire monitoring period (with the exception of the physical inspection fee). All units allocated credit on January 1, 1997 or a date thereafter but before December 31, 2000 paid (or will pay) the sum of \$175.00 per low-income unit, which covers the entire monitoring period (with the exception of the physical inspection fee). This sum was paid (or is payable for projects not yet placed in service) prior to the issuance of the IRS Form 8609. If the fee is not submitted, the IRS Form 8609 will not be issued by MSHDA.
2. On January 1, 2001, the following compliance monitoring fees became effective: All units for which an allocation of credit was not made by December 31, 2000 must pay the sum of \$300 per low-income unit, which will cover the entire monitoring period, including the physical inspection fee. This sum is payable prior to the issuance of the IRS Form 8609. If the fee is not submitted, the IRS Form 8609 will not be issued by MSHDA.

B. Annual Fee

1. All units that received an allocation of credit prior to January 1, 1993, and all projects financed by MSHDA that elected to make annual payments in lieu of the lump sum payment described above must submit payment equal to \$15.00 per low-income unit on an annual basis for every year of the compliance period. The \$15.00 per unit monitoring fees must be submitted for every low-income unit for which credit was claimed in a particular year. The fee must be submitted to MSHDA by February 1 of each year of the compliance period. Failure to submit the annual fee (for projects paying on an annual basis) will be considered an act of noncompliance. See [Part 735 \(Due Dates for Annual Certifications\)](#) for more information.

The \$175 per unit lump sum fee or the \$15 per unit annual fee (whichever is applicable to the project) must be paid for the manager/employee-occupied unit(s) if this unit(s) is being counted as a "rental unit" for purposes of determining the low income occupancy percentage for the building. If the manager/employee-occupied unit(s) is being considered "common space", no monitoring fee is required for this unit(s). For more information on the manager's unit, see [Part 930 \(Common Area Residential Unit\)](#).

Part 730 Physical Inspection Fees

The IRS requires that at least twenty percent (20%) of the low-income units in each building of the LITHC project be physically inspected at least once every three years. The fee for the physical inspection is \$30 per unit inspected and is assessed on a triennial basis in the year the inspection is conducted. Note the following:

- For projects paying compliance fees on an **annual** basis, this \$30 fee per unit inspected is in addition to the annual compliance fees discussed in **Part 725**. For projects financed by RHS, the fee is \$20 per low-income unit.
- For projects that paid an up-front **lump sum** monitoring fee before January 1, 2001, this \$30 fee is an additional fee. For projects financed by RHS, the physical inspection fee is \$20 per low-income unit.
- For projects that pay/paid an up-front fee after January 1, 2001, the **lump sum** monitoring fee included the fee for physical inspection.

MSHDA will send owners of projects an invoice for the physical inspection fee. Payment of the fees must be received by MSHDA no later than 30 days from the date the inspection is conducted. Failure to pay the physical inspection fee by this date could result in the issuance of an IRS Form 8823, Report of Noncompliance. For more information on physical inspections, see **Part 1020 (Physical Condition Standards)**.

**Part 735 Due Dates for Annual Compliance
 Certifications**

Annual compliance certifications (discussed in [Part 715](#)) and monitoring fees (not including the physical inspection fees), as described in [Parts 725 and 730](#), must be submitted for existing tax credit projects no later than February 1 of each year during the compliance period, beginning with the year for which credit was first claimed. If any of these dates fall on a weekend or holiday, the due date will be on the next business day. MSHDA may grant an extension to this time period, but only if a written request that explains the details for failure to report is received by MSHDA and only if MSHDA determines that there is good cause for granting such an extension.

Annual certifications of compliance with Section 42 and monitoring fees are due for each year of the compliance period, beginning with the first year for which credit is claimed. These certifications and fees must be received by MSHDA no later than February 1 of the following year.

For example:

<i>Number of Low Income Units</i>	<i>150</i>
<i>Total Number of Residential Units</i>	<i>150</i>
<i>Placed in Service (PIS)</i>	<i>June 1, 2001</i>
<i>First Occupied</i>	<i>June 1, 2001</i>

Scenario 1: Credit is claimed in the same year the project is PIS:

If credit is claimed for the year ended 12/31/2001, compliance certifications must be submitted to MSHDA for the year ended 12/31/2001. The first Tenant Income and Rent Report (TIRR) must reflect all tenant activity from the PIS date through the year end (06/01/2001 through 12/31/2001). These certifications would be due by 02/01/2002. For projects paying monitoring fees on an annual basis, fees in the amount of \$2,250 (150 units X \$15) for the compliance year ended 12/31/2001 are also due by 02/01/2002. The second TIRR would reflect all activity from 01/01/2002 through 12/31/2002 and would be due no later than 02/01/2003. For more information regarding monitoring fees, see [Part 725](#).

Scenario 2: Credit is first claimed in the year after the project is PIS:

If credit was not claimed for the year ended 12/31/2001 and is first claimed for the year ended 12/31/2002, compliance certifications must be submitted for the year ended 12/31/2002. The first TIRR must reflect all tenant activity from the PIS date through the last date of the year for which credit was first claimed (06/01/2001 through 12/31/2002). These certifications must be received by MSHDA no later than 02/01/2003. For projects paying an annual basis, monitoring fees in the amount of \$2,250 (150 X \$15) would be due for the year ended 12/31/2002 and must be received by MSHDA no later than 02/01/2003. No certifications or monitoring fees would be due on 02/01/2002. The second TIRR would reflect all activity from 01/01/2003 through 12/31/2003 and would be due no later than 02/01/2004.

Sample Copies of each of the forms listed below are included in **Appendix B**.

- A. Tenant Income Certification (MSHDA Form Mgt. 320)** – This form summarizes the household composition and income and asset amounts for a particular unit. See **Part 650**.
- B. Checklist – MSHDA Programs (MSHDA 1972-A)** – This form lists all of the sources of income and types of assets held by the applicant. See **Part 620**.
- C. Student Eligibility Certification (Form LIHTC 049)** – This form must be completed by every full-time student age 18 and over who is a member of a household residing in an LIHTC unit. This form must be completed for each initial certification and for every recertification of the household. See **Part 810** for more information about students
- D. Asset Certification (Form LIHTC 048)** – This form must be completed by every household in which the members have a combined total of less than \$5,000 in assets and for which the value of those assets are not being verified by a third party. This form must be completed for every initial certification and for each recertification of the household. For more information about assets, see **Part 610**.
- E. Zero Income Certification** – A form must be completed by every current and prospective tenant aged 18 and over, who, at initial certification or at recertification, claims to have no income. See **Part 635 (Issues Related to Income and Asset Determinations)** for more information.
- F. Authorization to Release Information for Section 8 Participants (Form LIHTC 045)** – This form is used by an Owner to obtain income and asset documentation from a Housing Agency for current tenants or prospective residents who are participants in the Section 8 Program. For more information on qualifying Section 8 households for LIHTC units, see **Part 680**.

The compliance forms listed above may be generated by computer so long as they duplicate exactly the LIHTC forms.

Part 745 :: Status of Resident Occupancy (SRO) Form

The SRO form is no longer used by MSHDA. All information previously contained on the SRO is now included on the TIC and the MSHDA Addendum to the TIC. See **Part 650** for more information.

Part 750 :: Consent to Release Information

A Release of Information Consent Form for and signed by each adult member of the household. Use of a consent form is recommended, however, MSHDA does not mandate the use of any particular form. A copy of the HUD 9887 (Notice and Consent to Release Information) is included in **Appendix J** as a sample.

Prior to using the HUD 9887 or 9887A, the owner/management agent should review the form to determine if it is satisfactory for the particular project. The HUD 9887 contains language, such as references to HUD regulations, field offices, and public housing authorities (PHA), which may not be applicable to all projects, particularly conventional and MSHDA-financed LIHTC developments. Projects with HUD financing must use the HUD 9887.

Part 755 :: The Tenant / Unit File

A separate tenant file must be created and maintained for each household in the project. The documentation that should be contained in the Tenant/Unit File is listed below. **Part 760** will discuss the preferred organization of the tenant/unit file.

- A. Initial Rental Application and All Interim and Annual Recertification Applications. See **Part 615** for more information.
- B. Tenant Income Certification See **Part 650**.
- C. Each adult member must complete a Checklist – MSHDA Programs and sign and date it. See **Part 620** for more information.
- D. Third Party Verifications of Income and Assets. See **Part 625**.
- E. Lease Agreement and Addenda. See **Part 675** for more information.
- F. Other Documents. This section includes, but is not limited to, any contract for optional items that the tenant pays for if not contained in the lease, such as garage or underground parking if not in base rent, and pets, etc.; documentation as to the change in the number of occupants; and income and asset certification if an additional adult moves into the unit.

- G. Applicable Housing and Financing Requirements Specific to this Unit. If other housing or financing programs govern the development, the applicable documentation reflecting compliance to its requirements should also be in the resident's file. These programs may include: HOME Investment Partnership, Tax Exempt Bond Financing, HUD or Rural Housing and Community Development Services (Farmer's Homes Administration). For additional information, see **Part 1080 (Interfacing LIHTC with other Government Housing Programs)**.
- H. A copy of Social Security Cards for every tenant over the age of five (5) is recommended but is not mandatory, unless the project contains Section 8 or 236 financing.
- I. A Consent to Release of Information form for and signed by each adult member of the household. See **Part 750 (Consent to Release Information)**.
- J. Student Eligibility Verification. See **Part 810 (Full-Time Students)** for information.
- K. If a project was funded under the Elderly Statutory Set-Aside, documentation that the tenant/household is eligible as an elderly person. See **Part 1050 (Statutory Set-Aside for Elderly Projects)** for information.

Part 760 :: Setting Up and Organizing the Tenant / Unit File



A separate file must be maintained for every unit/tenant in the development. MSHDA recommends that all developments use six-part press-board divider files or classification folders. Below is an outline of the preferred set-up of each tenant file:

1. Taped to the left inside jacket (cover) of the folder, copies of social security cards, driver's licenses, and tenant pictures. The unit number, number of bedrooms, move-in date and head of household should be clearly identified on the label of the folder or on the top sheet in the left inside jacket of the folder.
2. In a separate compartments of the folder, all eligibility certification paperwork should be organized in the following manner:

- A. A Tenant Income Certification (TIC) form or a HUD 50058 or HUD 50059 with the appropriate backup documentation or RHS 1944-8 form;
 - B. A checklist for adult household member #1;
 - C. A copy of third party verification of income and assets, of adult household member #1, in the order that they appear on the checklist;
 - D. A checklist (MSHDA form # 1792-A) for adult household member #2, etc., if applicable, followed by third party verifications;
 - E. A copy of the Asset Certification (LIHTC form #048), if applicable;
 - F. A copy of the Student Eligibility Certification (LIHTC form #049), if applicable; and
 - G. HUD 9887 or HUD 9887A, Authorization to Release Information, or similar form, if used by the development.
- 3. In another separate compartment of the folder should be the lease, lease addendums, and paper work discussing rent amounts (such as rent change notices).
 - 4. In another separate compartment should be all move-in paperwork (i.e. rental application, move-in checklist, criminal history background form, credit report, etc.).
 - 5. In another separate compartment should be correspondence, legal or eviction notices, maintenance requests, recertification notices, etc.
 - 6. Initial (move-in) eligibility documentation must always be maintained in each household's current tenant file, even if outdated information archived is purged from the file.
 - 7. A colored sheet of paper should be placed between the initial eligibility and each recertification thereafter to clearly separate the documentation pertinent to that certification.
 - 8. The outside of each tenant file should contain a label clearly identifying the unit number, household name, and move-date. If the project has multiple income set-aside levels (see **Part 910** for more information) or different program types, such as HOME and MSHDA Tax-Exempt Bonds, the program type(s) that each household is qualified under should also be listed on the label or the files can be color-coded.

Part 765 Audits of Tenant / Unit Files by MSHDA

As provided in IRS compliance monitoring regulations, MSHDA (or a contractual agent authorized by MSHDA) has the right to review a project's Tenant/Unit Files, Development File, and record-keeping and record retention files, in-house (at MSHDA offices) or on-site at the project and/or to perform physical inspections of tax credit projects as deemed necessary throughout the compliance period. MSHDA has the right to conduct the audits and inspections at any time, without notice. However, notice typically will be provided to the owner/management agent and the general procedures discussed below typically will be followed.

IRS regulations mandate that MSHDA conduct physical inspections and tenant file audits of 20% of the units in each building in the project at least once every three years. Owners of the projects will be required to provide, in part, detailed information about annual income certifications, the documentation received to support those certifications, and rent records. Projects may be chosen randomly or at MSHDA's discretion; however, all projects will be reviewed at least once every three (3) years.

A. When performing an on-site (at the project or management office) review, MSHDA will

1. Notify the owner and/or management agent one week in advance of the intended site visit. **NOTE:** *Physical inspection is not limited to occupied units. If non are available, staff may ask to see vacant units.*
2. Inform the management agent on the day of the review which unit files will be inspected.
3. Inform the owner within 20 working days of any findings of noncompliance with regard to such review.
4. Allow the owner 90 days to notify MSHDA of any correction of noncompliance. MSHDA may extend the correction period up to six months, but only if the Authority determines there is good cause for granting the extension.
5. Report all instances of noncompliance to the IRS whether or not the noncompliance has been corrected.

B. When performing an in-house (at MSHDA) review, MSHDA will:

1. Notify the owner in writing which unit files have been selected for review.
2. Request that the owner mail the selected files and documentation to MSHDA.
3. Give a time frame (up to 30 days) in which the tenant file documentation must be submitted.
4. Inform the owner within 20 working days of any findings of noncompliance with regard to such review.
5. Allow the owner 90 days to notify MSHDA of any correction of noncompliance.
6. Report all instances of noncompliance to the IRS whether or not the noncompliance has been corrected.

Should MSHDA decide to conduct an in-house or on-site inspection, the owner must acknowledge receipt of the results of the inspection within 10 days. Written response to MSHDA regarding each identified issue must be sent within 20 days indicating the manner in which any necessary corrections will be or are being implemented.

Part 770 :: Physical Inspections

MSHDA will conduct physical inspections of all buildings and a minimum of 20% of the low-income residential units in each building, and common areas at least once every three years. MSHDA retains the right to perform an inspection of any LIHTC building at any time during the compliance period. LIHTC projects must be maintained in accordance with Uniform Physical Condition Standards, as discussed in [Part 1020](#). For a related discussion, see [Part 730 \(Physical Inspection Fees\)](#).

Part 775 :: Amendments to Compliance Monitoring Procedures

The compliance monitoring procedures and requirements set forth herein are issued by MSHDA pursuant to Treasury Regulations. These provisions may be amended by MSHDA, for purposes of conforming with the Treasury Regulations and/or as may otherwise be appropriate, as determined by MSHDA or the IRS. In the event of any inconsistency or conflict between this Manual and the regulations, the provisions set forth in the regulations shall control.